

REFERENCE TITLE: railroad project siting; review

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HCR 2009

Introduced by
Representatives Paton, Pancrazi

A CONCURRENT RESOLUTION
ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO
THE SITING OF RAILROAD PROJECTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the
2 Senate concurring:

3 1. Under the power of the referendum, as vested in the Legislature,
4 the following measure, relating to the siting of railroad projects, is
5 enacted to become valid as a law if approved by the voters and on
6 proclamation of the Governor:

AN ACT

AMENDING SECTIONS 40-321 AND 40-809, ARIZONA REVISED STATUTES;
RELATING TO RAILROADS.

10 Be it enacted by the Legislature of the State of Arizona:

11 Section 1. Section 40-321, Arizona Revised Statutes, is
12 amended to read:

40-321. Power of commission to determine adequacy of service rendered by public service corporation; enforcement by order or regulation; duty of compliance by corporation; surety; utility surety fund; railroad eminent domain review; railroad review fund

19 A. When the commission finds that the equipment,
20 appliances, facilities or service of any public service
21 corporation, or the methods of manufacture, distribution,
22 transmission, storage or supply employed by it, are unjust,
23 unreasonable, unsafe, improper, inadequate or insufficient, the
24 commission shall determine what is just, reasonable, safe,
25 proper, adequate or sufficient, and shall enforce its
26 determination by order or regulation.

27 B. The commission shall prescribe regulations for the
28 performance of any service or the furnishing of any commodity,
29 and ~~upon~~ ON proper demand and tender of rates, the public
30 service corporation shall furnish the commodity or render the
31 service within the time and upon the conditions prescribed.

32 C. If, after notice and an opportunity to be heard, the
33 commission finds that a public service corporation is in default
34 of the terms and conditions of an order of the commission that
35 requires a performance bond, irrevocable letter of credit or
36 other surety, and the commission exercises its rights under the
37 bond, letter or other surety, the commission shall deposit all
38 monies received as a result of exercising the rights in the
39 utility surety fund established by subsection D of this section.

40 D. The utility surety fund is established consisting of
41 monies received by the commission pursuant to subsection C of
42 this section. Monies in the utility surety fund shall be
43 administered by the commission for the benefit of the customers
44 of the public service corporation who have incurred a loss of
45 services or commodities or for deposit support pursuant to this

1 section. Monies in the fund are continuously appropriated to
2 the commission and do not revert to the state general fund
3 pursuant to section 35-190.

4 E. THE COMMISSION MAY REVIEW ANY EXISTING OR PROPOSED
5 RAIL PROJECT BY A RAILROAD ON LAND ACQUIRED OR TO BE ACQUIRED BY
6 EMINENT DOMAIN, THREAT OF EMINENT DOMAIN OR AUCTION TO DETERMINE
7 WHETHER THE RAILROAD HAS EXAMINED ALTERNATIVE LOCATIONS AND HAS
8 CHOSEN A SITE OR ROUTE THAT MINIMIZES NEGATIVE AIR QUALITY,
9 NATURAL RESOURCE, WATER AND ECONOMIC IMPACTS AND NEGATIVE
10 IMPACTS ON HISTORICAL, ARCHEOLOGICAL OR GEOGRAPHIC LANDMARKS OR
11 CRITICAL INFRASTRUCTURE. IF THE COMMISSION REQUIRES A REVIEW,
12 THE RAILROAD SHALL CONTRACT FOR ASSESSMENT BY QUALIFIED THIRD
13 PARTIES ON THE NEGATIVE IMPACTS FOR CONSIDERATION OF
14 ALTERNATIVES TO THE LOCATION OF THE PROJECT. THE ASSESSMENT
15 SHALL ADDRESS WHETHER THE PROJECT MINIMIZES THE NEGATIVE
16 IMPACTS. THE RAILROAD SHALL PRESENT THE ASSESSMENT TO THE
17 COMMISSION FOR REVIEW. THE COMMISSION MAY SUGGEST ONE OR MORE
18 LOCATIONS IN THE AREA OF THE PROJECT THAT WOULD HAVE LESSER
19 IMPACTS AND THAT COULD ACCOMMODATE THE RAILROAD. THE COMMISSION
20 MAY ASSESS AND COLLECT FROM THE RAILROAD FEES FOR THE REVIEW AND
21 ANY OTHER NECESSARY COSTS OF THE COMMISSION. THE RAILROAD
22 REVIEW FUND IS ESTABLISHED CONSISTING OF FEES COLLECTED BY THE
23 COMMISSION PURSUANT TO THIS SUBSECTION. THE COMMISSION SHALL
24 ADMINISTER THE FUND. MONIES IN THE FUND ARE CONTINUOUSLY
25 APPROPRIATED TO THE COMMISSION FOR THE PURPOSES OF THIS
26 SUBSECTION AND DO NOT REVERT TO THE STATE GENERAL FUND PURSUANT
27 TO SECTION 35-190. THE COMMISSION SHALL REFUND TO THE RAILROAD
28 ANY UNUSED PORTION OF THE FEES COLLECTED. IF THE COMMISSION
29 REQUIRES A REVIEW, IT SHALL HOLD AT LEAST ONE PUBLIC HEARING AND
30 CONSIDER PUBLIC COMMENTS ON THE IMPACTS IN COMMUNITIES AFFECTED
31 BY THE PROJECT. FOR THE PURPOSES OF THIS SUBSECTION, "CRITICAL
32 INFRASTRUCTURE" MEANS ANY INFRASTRUCTURE THAT IF DAMAGED OR
33 NEGATIVELY IMPACTED WOULD WEAKEN OR THREATEN THE INTEGRITY OF
34 HOMELAND SECURITY IN THIS STATE OR THE UNITED STATES IN WHOLE OR
35 IN PART.

36 Sec. 2. Section 40-809, Arizona Revised Statutes, is
37 amended to read:

38 40-809. Specific powers of railroad corporations

39 A. Railroad corporations may:

40 1. Make surveys and select routes for railroad and
41 telegraph lines, and for that purpose, enter upon private and
42 public lands and waters, subject to responsibility for all
43 damage caused thereby.

1 2. Lay out the railroad not exceeding two hundred feet
2 wide, and construct and maintain it with single or double track,
3 with facilities the directors deem necessary for the convenient
4 use thereof.

5 3. Construct the railroad and telegraph lines across,
6 along or upon any stream of water, ~~water-course~~ WATERCOURSE,
7 street or highway, or across any railway, canal, ditch or flume
8 which the lines intersect, cross or run along. The corporation
9 shall restore them to their former state as near as possible in
10 order not to impair their use or injure the franchises of others
11 unnecessarily.

12 4. Cross, intersect or unite the railroad with any other
13 railroad theretofore constructed at any points on the route
14 thereof, and upon the premises of the other railroad, with the
15 ~~turn-out~~ TURNOUT, sidings, switches and other conveniences
16 necessary to make and complete the intersections and
17 connections. The railroads shall unite in making the
18 intersections and connections and the facilities therefor upon
19 terms agreed upon between them, but, if they are unable to agree
20 upon the compensation therefor, or the points at which, or the
21 manner in which the intersections and connections shall be made,
22 the compensation shall be ascertained and declared in the manner
23 provided by law relating to eminent domain for taking private
24 property for use of such corporations.

25 5. Take lands and materials to be used in the
26 construction and maintenance of railroad and telegraph lines in
27 the manner provided by law relating to eminent domain in the
28 event such lands and materials cannot be obtained by agreement
29 with the owners thereof. IF LAND IS TAKEN OR IS TO BE TAKEN BY
30 EMINENT DOMAIN, THREAT OF EMINENT DOMAIN OR AUCTION, THE
31 RAILROAD SHALL SUBMIT A REVIEW AND ASSESSMENT IF REQUIRED BY THE
32 CORPORATION COMMISSION PURSUANT TO SECTION 40-321, SUBSECTION E.

33 6. Transport persons and property on their railroad and
34 collect compensation therefor.

35 7. Take and enjoy by purchase, donation or condemnation
36 as provided by law relating to eminent domain, natural springs
37 and streams of water, or as much thereof as necessary in
38 operating the railroad, together with the right-of-way thereto
39 for pipes, ditches, canals and aqueducts for transporting the
40 water thereof.

41 8. Regulate the speed of locomotives or other machinery
42 used on the railroad, and establish, execute and enforce all
43 useful regulations for management of its trains and business,
44 and for securing the comfort, safety and good behavior of

1 passengers, employees and agents, and for prevention and
2 suppression of gambling on its cars.

3 9. Expel from its cars, using no more force than
4 necessary, any passenger who upon demand refuses to pay his fare
5 or who behaves in a rude, riotous or disorderly manner toward
6 other passengers or the employees of the corporation in charge
7 of the cars, or, upon his attention being called thereto,
8 persists in violating the rules of the corporation against
9 gambling on the cars.

10 B. For the purposes of making embankments, excavations,
11 ditches, drains, culverts and similar works, and of procuring
12 timber, stone, gravel and other materials for the construction
13 and security of the railroad, the corporation may take and
14 occupy as much more land as necessary or convenient for such
15 purposes.

16 C. If a railroad company's right-of-way, track or roadbed
17 upon its right-of-way passes through a canyon, pass or defile,
18 it shall not prevent any other railroad from occupancy and use
19 of the canyon, pass or defile in common with the railroad first
20 located, or the crossing of other railroads at grades.
21 Necessary expenses shall be equitably divided between the
22 railroads occupying and using the same canyon, pass or defile.

23 Sec. 3. Exemption from rule making

24 For the purposes of this act, the corporation commission
25 is exempt from the rule making requirements of title 41, chapter
26 6, Arizona Revised Statutes, for one year after the effective
27 date of this act.

28 Sec. 4. Retroactivity

29 This act applies retroactively to from and after December
30 31, 2007.

31 2. The Secretary of State shall submit this proposition to the voters
32 at the next general election as provided by article IV, part 1, section 1,
33 Constitution of Arizona.